



June 21, 1999

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR99-1696

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125195.

The City of Dallas (the "city") received a request for claim file number 95101006136. You seek to withhold two items from this file, claiming that the subject information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You must meet both prongs of this test for information to be excepted under section 552.103(a).

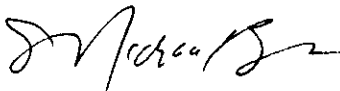
You represent that you have received a claim that complies with the notice requirements of the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. You submit a copy of the claim letter in support of your argument. You have therefore established a reasonable anticipation of litigation. See Open Records Decision No. 638 (1996) (fact that

governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). You also assert that the information was prepared in anticipation of the subject litigation. We conclude therefore that it relates to this pending litigation and may be withheld under section 552.103.

In reaching our decision here we assume that the opposing party has not had access to the subject information. Absent special circumstances, once information has been obtained by opposing parties in the litigation, section 552.103 no longer applies. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125195

Encl. Submitted documents

cc: Mr. Donald Hawkins
1712 Solitude Drive
Dallas, Texas 75241
(w/o enclosures)